

DEPARTMENT OF INDUSTRIAL RELATIONS

DIVISION OF LABOR STANDARDS ENFORCEMENT

LEGAL SECTION

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H. THOMAS CADELL, JR., *Chief Counsel*



July 22, 1997

Daniel K. Buntjer
Senior Staff Counsel
Department of Consumer Affairs
400 R Street
Sacramento, California 95814

Re: Telus application for contractor's license

Dear Mr. Bunjer:

Your request for a legal opinion concerning whether a Canadian corporation with employees who temporarily perform work in California is required to maintain workers compensation insurance for the benefit of such employees has been referred to this office.

We understand that Telus, a Canadian telecommunications company, has contracted to send certain of its employees who are residents of Canada to work in California for "limited periods of time," repairing damage to telecommunication's systems caused by floods, fires, earthquakes, and other natural disasters. These workers would presumably be covered under section 5 (1) of the Canadian Workers Compensation Act, despite the fact they are working in this state. Telus wishes to assign these workers to these projects without incurring the expense of securing workers compensation coverage from authorized carriers in California.

Pursuant to the mandate of article 13, section 4 of the California Constitution, our Legislature has enacted a comprehensive statutory scheme that defines employment "broadly in terms of 'service to an employer'" and includes "a general presumption that any person 'in service to another' is a covered employee." *Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal. 3d 341, 354, 256 Cal. Rptr. 543.

Thus, section 3700 of the Labor Code unequivocally provides that "[e]very employer except the state shall secure the payment of compensation..."

Section 3351 of the California Labor Code defines "employee" as "every person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed..." There can be no question that the employees of Telus are employees within the meaning of this section.

The existence of Canadian coverage which would inure to the benefit on the employees of Telus for any injuries sustained while they are serving on assignment in this jurisdiction, standing alone, is not a basis to excuse Telus from securing coverage from an authorized carrier in this state.

In this connection, section 3600.5 of the Labor Code provides in relevant part as follows:

"(b) Any employee who has been hired outside of this state and his employer shall be exempted from the provisions of this division while such employee is temporarily within this state doing work for his employer if such employer has furnished workmen's compensation insurance coverage under the workmen's compensation insurance or similar laws of a state other than California, so as to cover such employee's employment while in this state; provided, the extraterritorial provisions of this division are recognized in such other state and provided employers and employees who are covered in this state are likewise exempted from the application of the workmen's compensation insurance or similar laws of such other state.

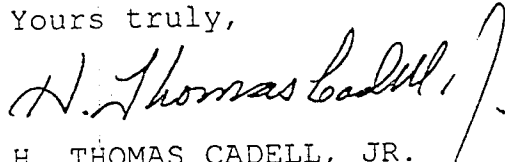
Even assuming, *arguendo*, that the term "state" as used in this section could be interpreted to include foreign sovereigns and that the Canadian law in question qualifies as a similar law, there is no indication from the provisions of the Canadian Workmen's Compensation Act attached to your memo that the reciprocity requirements of Labor Code § 3600.5 are satisfied. Accordingly, the exemption provisions of this section seem to be nonapplicable to this situation.

The effect of the all encompassing provisions of section 3700 is to require Telus to secure appropriate workers compensation coverage in this state prior to engaging in any operations within our borders. It is the opinion of this Division that under the circumstances disclosed in your letter, the mere fact that these employees may also enjoy coverage under the laws of their own country does not excuse Telus from compliance with the laws of this state.

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We trust this letter answers the question you have posed in all respects. If you require further assistance, please do not hesitate to contact the undersigned.

Yours truly,

A handwritten signature in cursive script, reading "H. Thomas Cadell, Jr.", followed by a large, stylized closing flourish.

H. THOMAS CADELL, JR.
Chief Counsel

c.c. John Duncan, Chief Deputy Director
Nance Steffen, Assistant Labor Commissioner
Greg Rupp, Assistant Labor Commissioner
Tom Grogan, Assistant Labor Commissioner
Abigael Calva, Assistant Labor Commissioner
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